

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TERRY KLEIN, derivatively on behalf of VANDA  
PHARMACEUTICALS, INC.

Plaintiff,

v.

TANG CAPITAL PARTNERS, LP, TANG  
CAPITAL MANAGEMENT, LLC, KEVIN TANG  
and VANDA PHARMACEUTICALS, INC.,

Defendants.

Civil Action No.

**COMPLAINT**

TERRY KLEIN (“Klein”), by her attorneys, alleges upon information and belief as to all paragraphs except paragraph 1, as follows:

1. Plaintiff Klein is a New York resident who is an owner of common stock of Vanda Pharmaceuticals, Inc. (“Vanda” or the “Company”).
2. Vanda, a nominal defendant herein, is a Delaware corporation with its principal place of business at 9605 Medical Center Drive, Suite 300, Rockville, Maryland 20850.
3. Defendant Tang Capital Partners LP (“Partners”) is a Delaware limited partnership with its principal place of business at 4401 Eastgate Mall, San Diego, California 92121.

4. Defendant Tang Capital Management LLC (“Management”) is a Delaware limited liability company with its principal place of business at 4401 Eastgate Mall, San Diego, California 92121.

5. Defendant Kevin Tang (“Tang”) is a U.S. citizen, with his business address at principal place of business at 4401 Eastgate Mall, San Diego, California 92121.

#### **Jurisdiction and Venue**

6. This action is brought derivatively on behalf of Vanda pursuant to Section 16(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §78p (“Section 16(b)”), to obtain disgorgement of profits obtained by defendants in violation of that statute. Jurisdiction of this court and venue in this district are proper pursuant to 15 U.S.C. §78(a)(a).

#### **The Governing Law**

7. Section 16(b) of the Exchange Act provides that if an officer, director or beneficial owner of more than 10 percent of a class of equity securities of an issuer, purchases and sells or sells and purchases shares of any equity security of such issuer within a period of less than six months, any profits arising from those transactions are recoverable by the issuer or by a shareholder suing derivatively on its behalf.

8. Under SEC Rule 16a-1(a)(1) promulgated under the Exchange Act, where two or more persons “act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding or disposing of securities of an issuer” as set forth in Section 13(d)(3) of the Exchange Act, such persons are deemed to be a “group” for purposes of determining §16(b) liability. Under SEC Rule 16a-1, the shares held by persons in such a group

are aggregated to determine whether the group has a greater than 10% beneficial ownership in the issuing corporation.

9. If the aggregate number of shares beneficially owned by the group exceeds 10%, each member of the group is deemed to be a greater than 10% beneficial owner and is liable to disgorge profits which such group member earns in stock transactions effected within a six-month period.

10. Under SEC Rule 16b-6(d) promulgated under the Exchange Act, “[u]pon cancellation or expiration of an option within six months of the writing of the option, any profit derived from writing the option shall be recoverable under Section 16(b) of the Act.”

#### **CLAIM FOR RELIEF**

11. Defendants Partners, Management and Tang (collectively, the "Tang Group"), constitute a group under §13(d)(3) of the Exchange Act and garnered short-swing profits disgorgeable to Vanda in the transactions hereinafter set forth.

12. At all relevant times, the Tang Group was a greater than 10% beneficial owner of Vanda common stock. As described below, the Tang Group wrote short call options which expired within six months of the writing of such options, resulting in disgorgeable short-swing profits in the amount of the premiums received by the Tang Group from writing these options. Each of Partners, Management and Tang is jointly and severally liable to disgorge such profits to the extent of their respective pecuniary interests in these transactions. The option transactions are detailed below.

### **The Options Transactions**

13. In Forms 4 filed on July 21, 2009, the Tang Group reported that it had written short call options covering 378,900 shares of Vanda common stock on July 17, 2009, with an expiration date of January 15, 2010 and an exercise price of \$15.00 per share. The price per share was \$2.4507, resulting in an aggregate premium received of \$928,570.

14. In Forms 4 filed on October 15, 2009, the Tang Group reported that it had written short call options covering 600,000 shares of Vanda common stock on November 13, 2009, with an expiration date of January 15, 2010 and exercise prices of \$15.00 per share (with respect to 300,000 shares) and \$12.50 per share (with respect to 300,000 shares). The price per share for the \$12.50 call options was \$1.5091, resulting in an aggregate premium received of \$452,730 and the price per share for the \$15.00 call options was \$1.05, resulting in an aggregate premium received of \$315,000.

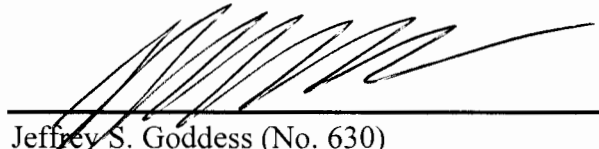
15. Each of the call options expired on January 15, 2010. As the call options expired within six months of the writing of the call options, under SEC Rule 16b-6(d), the premiums received from the writing of these call option are disgorgeable under Section 16(b). The total aggregate disgorgeable short-swing profits is \$1,696,300.

### **Allegations As To Demand**

16. On or about March 23, 2010, plaintiff made demand upon Vanda to commence this lawsuit. In a letter dated March 25, 2010, the Company indicated that it would not do so.

**WHEREFORE**, plaintiff demands judgment on behalf of Vanda against defendants, as described above, plus attorneys' fees, interest and such other and further relief as to the Court may seem just and proper.

Dated: April 7, 2010



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